UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ALLSTATE INSURANCE COMPANY,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 88-0287 P
	)	
SEVIGNEY-HILL & ASSOCIATES,	)	
	)	
Defendant	)	

ORDER GRANTING PLAINTIFF'S MOTION AND PETITION TO COMPEL ARBITRATION[1]

[1]Pursuant to 28 U.S.C. ' 636(c), the parties have consented to have United States Magistrate David M. Cohen conduct all proceedings in this case, including the trial, and to order the entry of judgment.

The plaintiff Allstate Insurance Company ("Allstate") has initiated this diversity action to compel the defendant Sevigney-Hill & Associates ("Sevigney"), an insurance agency licensed to sell insurance in Maine, to arbitrate a dispute between the parties pursuant to ' 5928(1) of the Maine Uniform Arbitration Act, 14 M.R.S.A. '' 5927-49,[2] or, in the alternative, if the court declines to compel arbitration, to seek an adjudication of the dispute. The plaintiff has separately filed a motion for entry of an order compelling arbitration.

The parties entered into an agency agreement dated March 1, 1985 which authorizes Sevigney, as Allstate's agent, "to receive and accept, subject to such restrictions on binding authority as may be established by the Company, proposals for insurance . . . as the Company may from time to time authorize to be written." I., Exhibit A to Petition; Affidavit of Charles Goller. An arbitration provision in the agreement provides, "In the event of any dispute arising out of or under this agreement between the Agent and the Company, both agree to submit such dispute to arbitration . . . ." VIII., Exhibit A to Petition.

[2]The plaintiff's petition also cites the Federal Arbitration Act, 9 U.S.C. '' 1-14. However, this federal statute only applies to maritime transactions or transactions involving interstate commerce. 9 U.S.C. '' 1-2. The pleadings do not provide the necessary predicate to establish the applicability of the federal act. Diversity between the parties is not enough to establish interstate commerce. See Booth v. Seaboard Fire & Marine Ins. Co., 285 F. Supp. 920, 925 (D. Neb. 1968), rev'd on other grounds, 431 F.2d 212 (8th Cir. 1970) (Federal Arbitration Act does not apply to diversity case involving individual insurance contract). Accordingly, I treat Maine law as governing this case.

The dispute in this case stems from a fire insurance policy issued by Allstate to cover an apartment building. Allstate alleges that Sevigney bound it to this risk and sent it the application for the policy on January 10, 1987. Petition 7. Allstate reviewed the application and rejected it because the age and nature of the building were such as to render it uninsurable under Allstate's underwriting guidelines. Petition 7-8. Allstate advised Sevigney to cancel the policy effective March 18, 1987. Petition 8; Affidavit of Craig H. MacDonald 8 and Exhibit C thereto. After receiving additional information from Sevigney about the building's age, Allstate advised Sevigney to rewrite the policy effective March 18, 1987. Petition 11; Exhibit D to Affidavit of Craig H. MacDonald. Allstate alleges that on May 11, 1987 it learned that Sevigney had provided incorrect information about the building's age. Petition 12-13. In May or June of 1987, while the insurance policy was in effect, the building was destroyed by fire.[3] Allstate alleges that Sevigney breached its obligations under the agency agreement, resulting in damages to Allstate of $120,000. Petition 16-17.

"In general, parties to a dispute cannot be compelled to submit their controversy to arbitration unless they have manifested in writing a contractual intent to be bound to do so." Nisbet v. Faunce, 432 A.2d 779, 782 (Me. 1981). According to 14 M.R.S.A. ' 5927:

> A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

[3]The plaintiff's petition alleges that the building was destroyed by fire on May 10, 1987. Petition 12. In contrast, the defendant claims that the fire occurred on June 3, 1987. Affidavit of Craig H. MacDonald 14-15.

On application of a party showing that such an agreement exists, the statute directs the court to order arbitration. 14 M.R.S.A. ' 5928(1).

Sevigney argues that the dispute in this case is not one "arising out of or under" the agency agreement, and that arbitration of this dispute therefore cannot be compelled.[4] Sevigney contends that it did not exercise any underwriting discretion in writing the insurance policy at issue here. According to Sevigney, it follows that it could not have bound Allstate to this risk nor could it have exceeded its authority under the agency agreement. Sevigney claims that the agency agreement is not implicated in this dispute because it acted as the agent of the insured, not as the agent of Allstate.

Sevigney argues that the initial decision to insure the risk at issue in this dispute was made by Allstate. Craig H. MacDonald, an employee of Sevigney, called Chris Hayden, an underwriter

[4]Sevigney also argues that the Maine statute only governs written contracts which require arbitration of "any controversy" between the parties, but that the agency agreement only provides for arbitration of some matters (those that arise out of or under the agency agreement), not "any" dispute. Thus, the defendant would ascribe to the word "any" in the statute the meaning "all" controversies rather than "each," "some" or "one" controversy. It is clear, however, that the statute is not limited to arbitration agreements which govern all disputes between the parties; instead, it includes agreements to arbitrate some disputes. See, e.g., Lewiston Firefighters Ass'n., Local 785 v. City of Lewiston, 354 A.2d 154, 164 (Me. 1976) (Maine Uniform Arbitration Act applies to employment contract providing for arbitration of "all claims ... arising under, out of, or in connection with, or in relation to the terms and conditions of this agreement or as to its performance.").

employed by Allstate, to determine if Allstate would write the fire insurance policy. Affidavit of Craig H. MacDonald 4-5. During this telephone conversation, Mr. Hayden authorized the issuance of the policy. Id. 5. Shortly after that conversation, MacDonald prepared an insurance binder, which "merely served to confirm the fact that Allstate had already agreed to write insurance on the property," id. 6, and sent Allstate an application for the policy, id. 7. Allstate then cancelled this policy, but, after receiving more information, made a second decision to insure the risk. Id. 8-13.

In determining whether the parties intended to submit a dispute to arbitration, courts will find the dispute arbitrable "'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.'" Westbrook School Committee v. Westbrook Teachers Assoc., 404 A.2d 204, 208 (Me. 1979), quoting United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960). This presumption of arbitrability is a reflection of Maine's strong policy favoring arbitration. Westbrook School Committee, 404 A.2d at 207-08 & n.6. See also Anderson v. Elliott, No. 5009, slip op. at 5 (Me., Mar. 8, 1989) (applying strong policy favoring arbitration to fee disputes between attorneys and clients); J.M. Huber Corp. v. Main-Erbauer, Inc., 493 A.2d 1048, 1049-50 (Me. 1985) (policy favoring arbitration applies to construction contract disputes). The policy "dictates a conclusion that the dispute has been subjected to arbitration if the parties have generally agreed to arbitrate disputes and if 'the party seeking arbitration is making a claim which, on its face, is governed by the . . . contract.'" (Emphasis in original; footnote omitted). Westbrook School Committee, 404 A.2d at 207-08, quoting Lewiston Firefighters Ass'n v. City of Lewiston, 354 A.2d 154, 165 (Me. 1976).

The provision in the agency agreement for arbitration of disputes "arising out of or under" the agreement could refer only to disputes in which Sevigney had full authority to bind Allstate, or it could refer more generally to any dispute relating to the agency relationship between the parties. If the agency agreement only requires arbitration of disputes in which Sevigney had full authority to bind Allstate, the evidence is at least conflicting on the issue of whether Sevigney exercised its binding authority both times the decision to insure the building was made; any doubts on this issue must be resolved in favor of arbitration.

In the original decision to issue the policy, Sevigney initiated the insurance coverage by writing a binder and preparing an application for the policy, even though Sevigney received approval by telephone from an Allstate underwriter before the insurance was issued.[5] Affidavit of Craig H. MacDonald 5-7; Supplemental Affidavit of Craig H. MacDonald 14. The insurance binder, with an effective date of January 10, 1987, lists Sevigney as "producer." Exhibit A to Affidavit of Craig H. MacDonald. The application is signed by MacDonald, an employee of Sevigney, on the line marked "agent"; the box marked "bound application" is filled in. Exhibit B to Affidavit of Craig H. MacDonald. The application includes an "agent statement" constituting the agent's response to a number of questions concerning the property to be insured; if the agent's response to any of these is "no," then the application states that it should be submitted "Non-Bound." Id. Under the "remarks" section, the agent notes, "I talked with Chris Hayden to ok risk." Id. Simply because Sevigney checked with Allstate before writing the binder does not clearly mean that Sevigney was not

[5]Sevigney concedes that it "might be a close question" whether the initial decision to issue the insurance policy involved the exercise of binding authority. See Supplemental Affidavit of Craig H. MacDonald 10.

exercising its binding authority as agent. Moreover, the form which Allstate sent to notify Sevigney that the policy was rejected appears to presume that Sevigney had exercised its binding authority in that it states, "You exceeded your binding authority as indicated below." Exhibit C to Affidavit of Craig H. MacDonald.

Similarly, the second decision to insure the building could arguably have involved an exercise of Sevigney's authority to bind Allstate. A memo from Chris Hayden, Allstate's underwriter, to MacDonald of Sevigney states, "Be advised that you may rewrite this effective 3/18/87." Exhibit D to Affidavit of Craig H. MacDonald (emphasis added). Given that doubts must be resolved in favor of arbitration, I conclude that, for purposes of this petition, Sevigney did have authority to bind Allstate on both occasions on which insurance was issued in this dispute, and that therefore this dispute falls within the arbitration provision of the agency agreement.

Furthermore, even if Sevigney did not exercise its authority to bind Allstate in the two decisions to insure the building, it still cannot be said with positive assurance that this dispute does not "arise out of or under" the parties' agency agreement. The agency agreement gives Sevigney the authority "to receive and accept . . . proposals for insurance . . . as the Company may from time to time authorize to be written." I., Exhibit A to Petition. This language could reasonably be interpreted to mean that Sevigney is acting as an agent of Allstate under the agreement even when Sevigney does not independently exercise its authority to bind Allstate. When both the initial and the second decisions to insure the building were made, Allstate received material information concerning the building from Sevigney and allegedly relied on this information in approving the insurance coverage. See Affidavit of Craig H. MacDonald 5, 9-10 and Exhibits B and D thereto; Petition 11. Sevigney's representations to Allstate concerning the building to be insured in this case

could reasonably be considered to implicate its duties of disclosure and loyalty as Allstate's agent, regardless of whether Sevigney actually acted to bind Allstate. Therefore, construing the arbitration provision liberally for purposes of this petition, this dispute is one "arising out of or under" the agency agreement.

Accordingly, it is ORDERED as follows:

1. The plaintiff's motion and petition to compel arbitration are GRANTED;

2. The parties shall proceed to submit their dispute to final and binding arbitration pursuant to, and in accordance with, Paragraph VIII of the Agency Agreement entered into by and between the parties on March 1, 1985 and the Maine Uniform Arbitration Act, 14 M.R.S.A. '' 5927-49.

Dated at Portland, Maine this 31st day of March, 1989.

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David M. Cohen
United States Magistrate